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December 10, 2004

Director, Tobacco Division
Farm Service Agency
STOP 0514
Room 4080-S
1400 Independence Avenue, S.W.
Washington, DC 20250-0514

Re: COMMENTS REGARDING IMPLEMENTATION OF THE ASSESSMENT
PROVISIONS OF THE FAIR AND EQUITABLE TOBACCO REFORM ACT OF 2004
(69 Fed. Reg. 67298 (Nov. 17, 2004)).

To Whom It May Concern:

Attached are joint comments of U.S. Smokeless Tobacco Company, Conwood Company, L.P. and Swedish Match North America Inc., submitted in response to the above captioned solicitation by USDA. These comments supplement the submission previously filed on behalf of U.S. Smokeless Tobacco Company on November 18, 2004.

We again express our willingness and availability to provide further assistance to USDA to implement these provisions.

If you have any questions, please do not hesitate to call us.

Bracewell & Patterson, L.L.P.

A handwritten signature in black ink, appearing to read 'Lisa M. Jaeger', written over a horizontal line.

Lisa M. Jaeger

Comments of
U.S. Smokeless Tobacco Company
Conwood Company, L.P.
Swedish Match North America Inc.
Regarding Implementation of the Assessment Provisions
of the Fair and Equitable Tobacco Reform Act of 2004

December 10, 2004

Congress adopted the Fair and Equitable Tobacco Reform Act of 2004 ("FETRA" or "the Act") as part of the American Jobs Creation Act, Pub. L. No. 108-357, §§ 611 - 643, Termination of Tobacco Quota Program and Related Provisions, 105 (2004). Generally, FETRA repeals the preexisting federal tobacco quota program and provides eligible tobacco quota holders and growers with the right to receive cash payments pursuant to the terms of the Act. To fund these payments, FETRA directs the Secretary of Agriculture (the "Secretary"), acting through the Commodity Credit Corporation ("CCC"), to impose quarterly assessments during each of fiscal years 2005 through 2014 on each tobacco manufacturer and importer within the classes designated in the Act. Section 642(a) of the Act authorizes but does not require the Secretary to issue implementing regulations. The Secretary signaled her intention to issue such regulations and sought comment from the public on future implementing regulations. 69 Fed. Reg. 67298 (Nov. 17, 2004).

U.S. Smokeless Tobacco Company filed comments on November 18, 2004 and now joins Conwood Company, L.P. and Swedish Match North America Inc. (collectively, "the companies") in filing these supplemental comments.

In FETRA, Congress established the Tobacco Trust Fund and directed the Secretary to assess tobacco manufacturers and importers amounts due to the Fund. Although Congress made clear how it intended the Secretary to derive allocations and assessments applicable to individual manufacturers and importers, those subject to the assessment will benefit from the certainty that regulations provide. The companies believe that the Secretary should consider several important aspects in any future implementing regulation.

In general, the regulations should reflect Congress's intent in FETRA to establish an objective, transparent assessment mechanism that is fair and equitable. The program should operate clearly and consistently, without arbitrary interpretations or applications that might undermine congressional intent.

Aggregate Assessments

In the Act, Congress established the maximum aggregate assessment that can be imposed on tobacco manufacturers and importers throughout the ten-year life of the program at no more than \$10.14 billion. Implementing regulations should be consistent with that decision.

Section 627 of the Act expressly limits the expenditures for which the assessments are imposed: “The total amount expended by the Secretary from the Tobacco Trust Fund to make payments under sections 622 and 623 and for the other authorized purposes of the Fund shall not exceed \$10,140,000,000.” By limiting the amount to be expended from the Fund, Congress thereby limited the aggregate assessments on tobacco manufacturers and importers, because the principal -- if only ---revenue stream to the Fund is the industry assessment.

The Act also delimits how the Secretary shall spend the funds: “Beginning with the calendar quarter ending on December 31 of each of fiscal years 2005 through 2014, the assessment payments over each four-calendar quarter period shall be sufficient to cover—(A) the contract payments made under Sections 622 and 623 during that period; and (B) other expenditures from the Tobacco Trust Fund made during the base quarter periods corresponding to the four calendar quarters of that period.” § 625(b)(2). Finally, the Act makes clear how the Secretary shall derive assessments on each manufacturer: “The Secretary, acting through the Commodity Credit Corporation, shall impose quarterly assessments during each of fiscal years 2005-2014, calculated in accordance with this section, on each tobacco product manufacturer and importer that sells tobacco products in domestic commerce in the United States during that fiscal year.” § 625(b)(1).

By limiting expenditures from the Fund to \$10,140,000,000, and establishing that number as the basis for calculating assessments on manufacturers and importers, Congress clearly established \$10.14 billion as the maximum aggregate assessment over the ten-year period beginning with fiscal year 2005.

II. Assessment Allocation Provisions

A. Generally

The Act directs the Secretary to impose assessments on each manufacturer and importer selling tobacco products in domestic commerce as a means for funding the annual quota buyout contract payments to be made to eligible quota holders and growers. The Act establishes a process for the Secretary to set annual assessments for each manufacturer and importer payable in equal quarterly installments. Any implementing regulations adopted by the Secretary should track this statutory process of allocation across and within classes to ensure a continuing fair and equitable distribution of the aggregate assessment for each fiscal year consistent with the initial statutory allocation.

B. Inter-Class Allocation

Under Section 625(b), the Secretary imposes assessments on designated classes of manufacturers and importers within the tobacco industry. For the initial assessment period beginning in fiscal year 2005, the Act directs the Secretary to allocate total assessments to each class of tobacco products using baseline percentages prescribed as follows:

◆ Cigarette manufacturers and importers	96.331%
◆ Cigar manufacturers and importers	2.783%
◆ Snuff manufacturers and importers	0.539%
◆ Roll-your-own tobacco manufacturers and importers	0.171%
◆ Chewing tobacco manufacturers and importers	0.111%
◆ Pipe tobacco manufacturers and importers	0.066%

§ 625(c)(1). As demonstrated by the attached schedules, these initial allocation percentages were derived simply by applying statutory tax rates (imposed by Internal Revenue Code ("IRC"), 26 U.S.C. § 5701 (2002) on each respective class of tobacco products) to federal tobacco excise tax data compiled and published by the Department of Treasury's Alcohol and Tobacco Tax and Trade Bureau ("TTB") with respect to removals of tobacco products during the 2003 calendar year. The federal excise tax, in turn, reflects that class of product's gross domestic volume. The Act's funding mechanism thus allocates total assessments to each class of tobacco products, using defined baseline percentages that reflect the relative share of each tobacco class of gross domestic volume and federal excise tax revenues for the most recently concluded calendar-year period. That same base calculation would apply throughout fiscal year 2005.

Congress also provided for subsequent year assessments through fiscal year 2014, clearly recognizing that over the course of time, domestic volumes of the various classes could change: "For subsequent fiscal years, the Secretary shall periodically adjust the percentage of the total amount required under subsection (b) to be assessed against, and paid by, the manufacturers and importers of each class of tobacco product specified in paragraph (1) to reflect changes in the share of gross domestic volume held by that class of tobacco product." § 625(c)(2). "Gross domestic volume" is "the volume of tobacco products— (A) removed (as defined by § 5702 of the IRC of 1986); and (B) not exempt from tax under chapter 52 of the IRC of 1986 at the time of their removal under that chapter or the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202)."

§ 625(a)(2). "Removed" product is the amount of product put into the stream of commerce, for which tax is due by a manufacturer or importer.¹ By taking this approach --

¹ Internal Revenue Code (IRC) 26 U.S.C. § 5701 prescribes the statutory tax rates applicable to each respective class of tobacco products, as defined in IRC 26 U.S.C. § 5702. IRC 26 U.S.C. § 5702(j) provides: " 'Removal' or 'remove' means the removal of tobacco products or cigarette papers or tubes from the factory or from internal revenue bond under section 5704, as the Secretary shall by regulation prescribe, or release from customs custody, and shall also include the smuggling or other unlawful importation of such articles into the United States." IRC 26 U.S.C. § 5703(b)(1) provides that "[t]he taxes imposed by section 5701 shall be determined at the time of removal of the tobacco products Such taxes shall be paid on the basis of [a] return. The Secretary [of the Treasury] shall, by regulations, prescribe the period or the

basing assessments on the amount of product from which tax revenue is derived -- Congress ensured that the manner of making future assessments would be consistent with its initial baseline percentages and assessments.

Congress further tied future assessments to tax data already required to be submitted by manufacturers, by requiring manufacturers to submit to the Secretary copies of forms they must submit to the TTB, on which they report product removed into the stream of commerce for which they incur tax liability.² See § 625(h). Given the precise content of the manufacturers' and importers' mandatory submissions to TTB³, and the purpose for which they are submitted -- calculating federal excise tax due -- Congress's reliance here on the same data ensures reliability and precision in its future assessments. It also ensures the integrity and verifiability of the data.⁴

By basing subsequent inter-class allocation percentages on each class's share of gross domestic volume and federal excise tax revenue during the most recently concluded calendar year, Congress has ensured that aggregate assessments for each class continue to reflect an equitable allocation of the tobacco quota buyout assessments. Moreover, adjusting inter-class allocation percentages annually in a manner consistent with the establishment of the initial allocation percentages would provide a simple and reliable methodology for administering the assessment provisions while remaining true to the framework of the Act. Further, this approach is fully compatible with the statutory text, given that changes in the share of gross domestic volume of each class of tobacco products are necessarily reflected in year-by-year comparisons of federal excise tax

event for which such return shall be made and the information to be furnished on such return. . . .”

² Section 625(h) of the Act provides, *inter alia*:

(h) MEASUREMENT OF VOLUME OF DOMESTIC SALES.—(1) SUBMISSION OF INFORMATION.—Each manufacturer and importer of tobacco products shall submit to the Secretary a certified copy of each of the returns or forms described by paragraph (2) that are required to be filed with a Federal agency on the same date that those returns or forms are filed, or required to be filed, with the agency.

(2) RETURNS AND FORMS.—The returns and forms described by this paragraph are those returns and forms that relate to—(A) the removal of tobacco products into domestic commerce (as defined by section 5702 of the Internal Revenue Code of 1986); and (B) the payment of the taxes imposed under chapter 52 of the Internal Revenue Code of 1986, including AFT Form 5000.24 and United States Customs Form 7501 under currently applicable regulations.

³ *E.g.*, under IRC 26 U.S.C. § 5703(b), the TTB regulates the manner in which manufacturers and importers of tobacco products must remit tax with respect to tobacco products distributed in domestic commerce. See generally 27 C.F.R. § 40. Pursuant to 27 C.F.R. § 40.162, manufacturers of tobacco products are generally required to report semimonthly removals into domestic commerce on Form 5000.24 to the ATF. Related regulations require manufacturers to remit tax with respect to such removals at the statutory rate for each respective class of tobacco products. See 27 C.F.R. 40.168 (remittance with return); 27 C.F.R. § 40.167 (prepayment tax return); and 27 C.F.R. § 40.165a (payment of tax by electronic fund transfer).

⁴ The TTB's National Revenue Center has for over a decade published monthly statistical releases compiling taxable volumes for each respective class of tobacco products; each statistical release typically contains a column indicating year-to-date taxable removals for each class. Available at TTB, Tobacco Statistics, www.ttb.gov/tobacco/stats/index.htm (monthly statistical release data available online for 1996 through 2004). Further, TTB's Tax Audit Division, which maintains 10 field offices and is staffed by professional auditors committed to ensuring that the proper amount of tax is paid, ensures the integrity of data filed by taxpayers. See TTB, TTB's Tax Audit Division: A New Division for a New Bureau, available at www.ttb.gov/tax_audit/tax_new_division_feature.html.

revenue collection data.

C. Intra-Class Allocations

The Act directs the Secretary to allocate assessments within a class pro rata based on each class member's market share within the class for the immediately preceding base period ending June 30. *See* §§ 625(e),(f). The regulations should clarify that once established, each manufacturer's or importer's intra-class allocation percentage shall remain unchanged for purposes of computing assessments for the corresponding fiscal year.⁵ We believe that the amount of each quarterly assessment should be calculated on an annual basis. This would enable companies to budget and plan for each quarterly payment. An annual assessment amount, spread equally over four quarters, is more easily managed, would smooth out any seasonal or special market effects, and would not adversely affect other program participants.

Section 625(a)(3) defines "market share" as the "share of each manufacturer or importer of a class of tobacco products (expressed as a decimal to the fourth place) of the total volume of domestic sales of the class of tobacco product during the base period for a fiscal year for an assessment under this section." Section 625(e)(2) further provides that "[n]o manufacturer or importer shall be required to pay an assessment that is based on a share that is in excess of the manufacturer's or importer's share of domestic volume." Under § 625(g)(3), the volume of domestic sales is based on gross domestic volume, specifically measured by: "(A) in the case of cigarettes and cigars, the number of cigarettes and cigars; and (B) in the case of the other classes of tobacco products specified in subsection (c)(1), in terms of number of pounds, or fraction thereof, of those products." Thus, the Act's intra-class allocation provisions explicitly provide for a compatible common denominator for distributing assessments within each class.

In addition, under § 625(g)(1), the Secretary determines the volume of domestic sales of a class based on information provided by manufacturers and importers, "as well as any other relevant information provided to or obtained by the Secretary." The most detailed, relevant and accurate data for any class will be the data provided by manufacturers and importers within that class. Therefore, the Secretary should rely on objective data provided by manufacturers and importers and avoid using other data. To the extent that the Secretary relies on other relevant data, the data should be objective, verifiable and transparent to all program participants.

D. Additional Assessments

⁵ This would obtain, except when there is a new entrant to the market. This would require the Secretary to recalculate the intra-class allocation, to ensure the new entrant is responsible for its share of the assessment

We are concerned about how the Secretary will address situations where a company has failed to pay its assessments, or has gone out of business or into bankruptcy. Such situations could result in an insufficient amount of assessments being collected for the program, triggering additional assessments under § 625(c)(3). Several possible scenarios are easily identified and raise different issues.

Suppose, for example, that a company has filed bankruptcy and has either sought to reduce or eliminate its assessment obligations. In such case, the company would continue to have sales and market share, yet may be relieved, perhaps temporarily, of the obligation to pay assessments. In this situation, companies that are paying their assessments should not be required to assume the additional costs resulting from the bankruptcy. The Secretary should develop an approach to handle this situation fairly and equitably, so that companies are not unduly disadvantaged in the marketplace. For example, perhaps CCC funds could cover any shortfall in these situations.

Finally, to the extent that adjustments to the assessments must be made as a result of insufficient amounts, such adjustments should be made only within each product class. A manufacturer in one class should not, for example, be assessed the shortfall stemming from the insolvency of a manufacturer in a different class. By making additional assessments on an intra-class basis, parties are ensured that manufacturers and importers within the class, who are most likely to have captured the market share left open by the bankrupt producer, are also bearing the corresponding additional assessments. Section 625(e)(2) contemplates this equitable distribution of additional assessments: “[n]o manufacturer or importer shall be required to pay an assessment that is based on a share that is in excess of the manufacturer’s or importer’s share of domestic volume.”

III. Procedural Considerations and Assertion of Rights

The Act establishes the process by which the Secretary collects assessments and how payees may challenge the assessment. Under § 625(d)(1), the Secretary provides to each manufacturer or importer subject to assessment “written notice setting forth the amount to be assessed against the manufacturer or importer for each quarterly payment period... not later than 30 days before the date payment is due.” Under § 625(d)(3), the Secretary collects assessments quarterly. A manufacturer may challenge an assessment within 30 days and in an administrative proceeding demonstrate that the assessment is wrongly calculated. § 625(i)(2). A manufacturer may seek review of an adverse administrative decision in federal district court. § 625(j). How the Secretary effectuates these procedures is critical to preserving the ability of manufacturers to protect their rights.

First, this tight timeframe of 30 days for informing manufacturers of the amount assessed, and collecting the amount necessitates that the Secretary follow a reliable, consistent, and verifiable methodology for determining the inter-class and intra-class allocation percentages pursuant to § 625(c), (e), and (f). In addition, the Secretary would of necessity, when making “periodic” adjustments to allocation percentages, adopt a timeframe that is administratively workable and that preserves each manufacturer’s

ability to challenge the periodic allocation adjustment during the administrative appeal process provided to challenge the individual assessment.

In addition, because the Act first requires that a certain total amount of tax be paid, and next requires allocation of assessments among parties, a change to the assessment imposed on any one manufacturer or importer could adversely affect all other manufacturers or importers. For this reason, adequate process must be provided to all payees whenever the Secretary makes any adjustments to the amounts assessed, including allocation adjustments, individual assessments and any other action taken that could affect the amount owed by the other parties. Similarly, payees must have adequate process to protect their interests in judicial proceedings. Section 625(j), which allows a manufacturer or importer aggrieved by an action of the Secretary to seek judicial review “at any time following exhaustion of the administrative remedies” raises the concern that court-ordered adjustments to assessments could occur at any time in the future. In addition to the procedures established by legislation, the Secretary should ensure that parties have adequate notice and opportunity to comment or participate in formal proceedings.

Finally, in taking this approach, Congress is imposing on parties subject to the Act a tax, not conferring a benefit. Thus the very nature of the program underscores the need for sufficient process for those paying the tax to fully protect their interests and rights.

An additional concern about the notification process is § 625(d)(2)(G), which requires the Secretary to include market share information of competitors in the assessment notice. Given the lack of any express indication to the contrary, we believe that Congress did not intend the Secretary to override existing protections for any data that is proprietary and confidential. If the market share information for the recipient is confirmed by the recipient’s own data, competitors’ information is not needed.

IV. Interest on Amounts in Escrow and Program Costs

Section 625(i) provides that disputed amounts may be paid into escrow pending an administrative challenge. Notably, however, § 625(i) lacks an explicit provision requiring payment of statutory interest with respect to escrowed amounts ultimately ruled excessive, and presumably returned to the challenging manufacturer or importer at the conclusion of the administrative process. In contrast, with respect to the judicial review process prescribed by the Act, § 625(j)(3) expressly provides: “The court shall restrain collection of the excessive portion of any assessment or order a refund of excessive assessments already paid, along with interest calculated at the rate prescribed in section 3717 of title 31, United States Code, if it finds that the Secretary’s determination is not supported by a preponderance of the information available to the Secretary.”

The most reasonable construction of § 625(j)(3) is that a successful judicial appeal would entitle the challenging manufacturer or importer to statutory interest with respect to the excessive portion of any assessment. Because failure to provide similarly for statutory

interest in the administrative appeals process would render Section 625(i) constitutionally suspect, regulations should extend the Section 625(j) interest provision to the administrative challenge process. Nevertheless, regulations should further clarify that any manufacturer or importer challenging an assessment must pay its assessment by the due date prescribed by the Secretary, as required by Section 625(i)(5), which provides for “immediate payment of undisputed amounts” and the payment of disputed amounts into escrow.

We understand that the assessment amount will include costs incurred by the Tobacco Trust Fund. We believe that the Secretary should clearly delineate such costs, including regular audits made available to manufacturers, to ensure the transparent operation of the program.

V Conclusion

Congress gave clear statutory direction in FETRA to the Secretary regarding the amounts and manner of collecting tobacco assessments. To the extent that fair and equitable implementation of the Act requires elucidation by the Secretary, the Secretary should ensure that all parties are provided notice and an opportunity to comment on the Secretary's rationale for implementation decisions. More fundamentally, any implementing regulations should provide additional opportunity -- not less -- for parties subject to the tax imposed by the Act to protect their interests and rights at each stage of the proceedings. We would be pleased to provide any further information that could assist the Secretary in implementing the Act.

**A RESPONSE TO THE DEPARTMENT OF AGRICULTURE'S REQUEST
FOR COMMENTS REGARDING THE IMPLEMENTATION OF THE
ASSESSMENT PROVISIONS OF THE FAIR AND EQUITABLE TOBACCO
REFORM ACT OF 2004**

**INSTRUCTIONS FOR DETERMINING INTERCLASS ALLOCATIONS UNDER
THE FAIR AND EQUITABLE TOBACCO REFORM ACT OF 2004**

INTERCLASS ALLOCATIONS

***WORKPAPERS A THROUGH C - DETERMINATION OF THE PERCENTAGE OF TOTAL FEDERAL TOBACCO
BUYOUT PAYMENTS TO BE ASSESSED AGAINST, AND PAID BY, EACH CLASS OF MANUFACTURERS
AND IMPORTERS PURSUANT TO SEC. 625(c)(1) AND (c)(2).***

WORKPAPER A

Alcohol & Tobacco Tax and Trade Bureau ("TTB"), National Revenue Center, Monthly Statistical Release -
Tobacco Products.

WORKPAPER B

Input current federal excise tax rates pursuant to 26 U.S.C.S. 5701.

WORKPAPER C

Workpaper automatically calculates interclass allocations based on information flowing from Workpapers A and B.

*Based on example information provided, interclass allocation percentages are identical to "Initial Allocation" set by Sec.
625(c)(1).*

WORKPAPER A

Alcohol and Tobacco Tax and Trade Bureau

National Revenue Center

Monthly Statistical Release - Tobacco Products

Reporting Period: December 2003 Revised August 19, 2004

(Number of Cigarettes and Cigars - Pounds of Pipe, Chewing Tobacco and Snuff)

	CURRENT YEAR-TO-DATE	LINE REFERENCE
Removed Taxable including from Puerto Rico		
Cigarettes - Small	377,241,580,953	
Cigarettes - Large	-	
Cigars - Small	2,301,972,488	2
Cigars - Large, Class A-G	2,207,987,274	
Class H	1,810,535,940	
Total Large	4,018,523,214	3
Snuff	74,700,715	4
Chewing Tobacco	45,906,067	5
Pipe Tobacco	4,155,205	6
Roll-Your-Own Tobacco	11,353,137	7
IMPORTED FROM FOREIGN COUNTRIES		
Entered/Withdrawn for Consumption		
(As reported by the Bureau of the Census)		
Cigarettes - Total	23,085,086,000	8
Cigars - Small	172,369,009	9
Cigars - Large, Class A-G	206,375,000	
Cigars - Large, Class H	308,191,000	
Total Large Cigars	514,566,000	10
Snuff	8,369	11
Chewing Tobacco	174,399	12
Pipe Tobacco	698,086	13
Roll-Your-Own Tobacco	1,254,008	14

NOTE: INPUTS ABOVE ARE HIGHLIGHTED IN YELLOW

WORKPAPER B

Federal Excise Tax Rates on Tobacco Products

Per 26 USCS Sec. 5701 (Internal Revenue Code ("IRC") Sec. 5701)

	<u>RATE</u>		<u>LINE_</u> <u>REFERENCE</u>
Cigars			
Small	\$ 1.82800 per thousand	IRC Sec. 5701(a)(1)	1
Large	\$ 48.75000 per thousand	IRC Sec. 5701(a)(2)	2
Cigarettes			
Small	\$ 19.50000 per thousand	IRC Sec. 5701(b)(1)	3
Smokeless Tobacco			
Snuff	\$ 0.58500 per pound	IRC Sec. 5701(e)(1)	4
Chewing Tobacco	\$ 0.19500 per pound	IRC Sec. 5701(e)(2)	5
Pipe Tobacco	\$ 1.09690 per pound	IRC Sec. 5701(f)	6
Roll-Your-Own Tobacco	\$ 1.09690 per pound	IRC Sec. 5701(g)	7

NOTE: INPUTS ABOVE ARE HIGHLIGHTED IN YELLOW

WORKPAPER C

2003 Interclass Allocations Based on Federal Excise Tax ("FET") Collections

	BASE MODEL YEAR	CROSS REFERENCE
	2003	
Domestic Taxable Cigarettes	377,241,580,953	Workpaper A, Ln. 1
Imported Taxable Cigarettes	23,085,086,000	Workpaper A, Ln. 8
Total Taxable Cigarettes	400,326,666,953	
Federal Excise Tax Rate	0.019500	Workpaper B, Ln. 3
Cigarette Tax Revenue	7,806,370,008	
% of Federal Excise Tax Collections	96.331%	
Domestic Taxable Small Cigars	2,301,972,488	Workpaper A, Ln. 2
Imported Taxable Small Cigars	172,369,000	Workpaper A, Ln. 9
Total Taxable Small Cigars	2,474,341,488	
FET	0.001828	Workpaper B, Ln. 1
Small Cigars Tax Revenue	4,523,096	
Domestic Taxable Large Cigars	4,018,523,214	Workpaper A, Ln. 3
Imported Taxable Large Cigars	514,566,000	Workpaper A, Ln. 10
Total Taxable Large Cigars	4,533,089,214	
Federal Excise Tax Rate	0.048750	Workpaper B, Ln. 2
Large Cigar Tax Revenue	220,988,096	
Total Cigar Tax Revenue (Large and Small)	225,511,195	
% of Federal Excise Tax Collections	2.783%	
Domestic Snuff	74,700,715	Workpaper A, Ln. 4
Imported Snuff	8,389	Workpaper A, Ln. 11
Total Snuff	74,709,084	
Federal Excise Tax Rate	0.585000	Workpaper B, Ln. 4
Snuff Tax Revenue	43,704,814	
% of Federal Excise Tax Collections	0.539%	
Domestic Chewing Tobacco	45,906,067	Workpaper A, Ln. 5
Imported Chewing Tobacco	174,399	Workpaper A, Ln. 12
Total Chewing Tobacco	46,080,466	
Federal Excise Tax Rate	0.195000	Workpaper B, Ln. 5
Chewing Tobacco Tax Revenue	8,985,691	
% of Federal Excise Tax Collections	0.111%	
Domestic Pipe Tobacco	4,155,205	Workpaper A, Ln. 6
Imported Pipe Tobacco	698,086	Workpaper A, Ln. 13
Total Pipe Tobacco	4,853,291	
Federal Excise Tax Rate	1.096900	Workpaper B, Ln. 6
Pipe Tobacco Tax Revenue	5,323,575	
% of Federal Excise Tax Collections	0.066%	
Domestic Roll-Your-Own	11,353,137	Workpaper A, Ln. 7
Imported Roll-Your-Own	1,254,008	Workpaper A, Ln. 14
Total Roll-Your-Own	12,607,145	
Federal Excise Tax Rate	1.096900	Workpaper B, Ln. 7
Roll-Your-Own Tax Revenue	13,828,777	
% of Federal Excise Tax Collections	0.171%	
Total FET Collections	8,103,724,058	
	100.000%	

NOTE: NO INPUTS REQUIRED ON THIS WORKPAPER

COMMENTS PROVIDED BY U.S. SMOKELESS TOBACCO COMPANY, CONWOOD COMPANY, L.P.
AND SWEDISH MATCH NORTH AMERICA INC.

IRC, 2004-CODE-VOL, SEC. 5701.

RATE OF TAX.

SEC. 5701. RATE OF TAX.

5701(a) CIGARS. --On cigars, manufactured in or imported into the United States, there shall be imposed the following taxes:

5701(a)(1) SMALL CIGARS. --On cigars, weighing not more than 3 pounds per thousand, \$1.828 cents per thousand (\$1.594 cents per thousand on cigars removed during 2000 or 2001),

5701(a)(2) LARGE CIGARS. --On cigars weighing more than 3 pounds per thousand, a tax equal to 20.719 percent (18.063 percent on cigars removed during 2000 or 2001) of the price for which sold but not more than \$48.75 per thousand (\$42.50 per thousand on cigars removed during 2000 or 2001).

Cigars not exempt from tax under this chapter which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.

5701(b) CIGARETTES. --On cigarettes, manufactured in or imported into the United States, there shall be imposed the following taxes:

5701(b)(1) SMALL CIGARETTES. --On cigarettes, weighing not more than 3 pounds per thousand, \$19.50 per thousand (\$17 per thousand on cigarettes removed during 2000 or 2001);

5701(b)(2) LARGE CIGARETTES. --On cigarettes, weighing more than 3 pounds per thousand, \$40.95 per thousand (\$35.70 per thousand on cigarettes removed during 2000 or 2001); except that, if more than 6 $\frac{1}{2}$ inches in length, they shall be taxable at the rate prescribed for cigarettes weighing not more than 3 pounds per thousand, counting each 2 $\frac{3}{4}$ inches, or fraction thereof, of the length of each as one cigarette.

5701(c) CIGARETTE PAPERS. --On cigarette papers, manufactured in or imported into the United States, there shall be imposed a tax of 1.22 cents (1.06 cents on cigarette papers removed during 2000 or 2001) for each 50 papers or fractional part thereof; except that, if cigarette papers measure more than 6 $\frac{1}{2}$ inches in length, they shall be taxable at the rate prescribed, counting each 2 $\frac{3}{4}$ inches, or fraction thereof, of the length of each as one cigarette paper.

5701(d) CIGARETTE TUBES. --On cigarette tubes, manufactured in or imported into the United States, there shall be imposed a tax of 2.44 cents (2.13 cents on cigarette tubes removed during 2000 or 2001) for each 50 tubes or fractional part thereof, except that if cigarette tubes measure more than 6 $\frac{1}{2}$ inches in length, they shall be taxable at the rate prescribed, counting each 2 $\frac{3}{4}$ inches, or fraction thereof, of the length of each as one

cigarette tube.

5701(e) SMOKELESS TOBACCO. --On smokeless tobacco, manufactured in or imported into the United States, there shall be imposed the following taxes:

5701(e)(1) SNUFF. --On snuff, 58.5 cents (51 cents on snuff removed during 2000 or 2001) per pound and a proportionate tax at the like rate on all fractional parts of a pound.

5701(e)(2) CHEWING TOBACCO. --On chewing tobacco, 19.5 cents (17 cents on chewing tobacco removed during 2000 or 2001) per pound and a proportionate tax at the like rate on all fractional parts of a pound.

5701(f) PIPE TOBACCO. --On pipe tobacco, manufactured in or imported into the United States, there shall be imposed a tax of \$1.0969 cents (95.67 cents on pipe tobacco removed during 2000 or 2001) per pound (and a proportionate tax at the like rate on all fractional parts of a pound).

5701(g) ROLL-YOUR-OWN TOBACCO. --On roll-your-own tobacco, manufactured in or imported into the United States, there shall be imposed a tax of \$1.0969 cents (95.67 cents on roll-your-own tobacco removed during 2000 or 2001) per pound (and a proportionate tax at the like rate on all fractional parts of a pound).

5701(h) IMPORTED TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES. --The taxes imposed by this section on tobacco products and cigarette papers and tubes imported into the United States shall be in addition to any import duties imposed on such articles, unless such import duties are imposed in lieu of internal revenue tax.

NON: IRC-FILE S5701(A)(1)

[http://tax.cchgroup.com/network&JA=LK&fNoSplash=Y&&LKQ=GUID%3A1d80e92d-6e88-359b-995f-70fd6c779f8d&KT=L&fNoLFN=TRUE& IRC01 #6674 \[IRC-FILE \]](http://tax.cchgroup.com/network&JA=LK&fNoSplash=Y&&LKQ=GUID%3A1d80e92d-6e88-359b-995f-70fd6c779f8d&KT=L&fNoLFN=TRUE& IRC01 #6674 [IRC-FILE])



**Alcohol and Tobacco Tax and Trade Bureau
National Revenue Center**

Monthly Statistical Release - Tobacco Products

Reporting Period: December 2003

(Number of Cigarettes and Cigars- Pounds of Pipe, Chewing Tobacco and Snuff)

	December 2003	November 2003	December 2002	CURRENT YEAR-TO-DATE	PREVIOUS YEAR-TO-DATE
Manufactured or received from Puerto Rico					
Cigarettes - Small	32,078,272,19	36,769,397,117	26,192,766,811	499,967,140,295	532,021,029,614
Cigarettes - Large	0	0	0	0	0
Cigars - Small	200,128,501	169,781,823	170,488,381	2,821,913,591	2,478,282,347
Cigars - Large	289,292,651	310,793,024	244,768,987	4,017,125,724	3,818,750,717
Snuff	6,246,343	5,663,591	5,813,358	77,021,799	72,911,836
Chewing Tobacco	3,123,274	3,038,003	2,949,328	46,205,436	47,837,974
Pipe Tobacco	335,234	349,084	307,035	4,874,568	5,124,404
Roll-Your-Own Tobacco	804,258	800,558	858,616	12,034,749	10,462,934
Removed Taxable including from Puerto Rico					
Cigarettes - Small	11,988,038,440	27,338,040,663	27,895,142,706	377,241,580,955	195,243,584,776
Cigarettes - Large	0	0	0	0	0
Cigars - Small	189,201,508	160,731,884	178,978,401	2,301,972,488	2,247,836,178
Cigars - Large, Class A-G	169,850,308	180,072,717	136,090,131	2,207,987,274	2,633,424,899
Class H	129,153,538	114,332,551	131,455,379	1,810,535,940	1,072,667,844
Total Large	299,006,844	294,405,271	267,545,510	4,018,523,214	3,706,292,542
Snuff	6,059,767	5,641,747	6,008,594	74,700,715	71,244,439
Chewing Tobacco	3,376,308	3,159,183	3,491,588	45,906,057	47,095,216
Pipe Tobacco	304,744	268,843	320,835	4,155,205	4,027,209
Roll-Your-Own Tobacco	891,967	618,584	935,911	11,353,137	10,567,881
Removed Tax Exempt - Cigarettes					
Small - Export	9,611,946,400	11,167,414,601	11,208,560,420	123,937,613,564	131,858,688,820
Transfer to Export Warehouses	239,145,309	180,148,801	404,516,009	2,511,543,700	4,162,002,209
Use of the U.S.	636,000	6,024,000	0	60,423,409	1,656,000
Personal Consumption/Export	6,737,265	8,320,151	21,749,934	121,654,116	294,755,132
Total Small	10,058,764,969	11,361,907,551	11,632,826,354	126,631,234,782	136,317,302,152
Large	0	0	0	0	0
Removed Tax Exempt - Cigars					
Small - Export	40,038,000	38,504,400	24,270,000	344,522,304	243,780,000
Transfer to Export Warehouses	570,060	108,000	168,000	10,354,000	26,712,400
Use of the U.S.	0	0	0	0	0
Personal Consumption/Export	0	0	0	0	6,080
Total Small	40,608,060	38,612,400	24,438,000	354,876,304	270,498,480
Large-Export	5,284,000	4,556,550	5,384,500	70,184,950	67,601,464
Transfer to Export Warehouses	1,723,100	704,600	265,900	23,030,700	11,386,700
Use of the U.S.	0	0	0	0	0
Personal Consumption/Export	34,193	25,379	37,145	367,045	487,895
Total Large	7,041,293	5,286,529	5,687,545	93,582,695	79,676,087
Removed Tax Exempt - Smokeless Tobacco					
Snuff-Export and to Export Warehouses	62,175	59,065	39,294	1,470,425	1,362,267
Other	22,340	4,218	2,836	43,151	43,151
Chewing Tobacco-Export & to Export Warehouses	9,083	13,370	5,072	726,305	726,305
Other	268	316	394	5,091	5,091

Changes in figures from prior reports could be due to amended reports being filed

Date Re-issued: August 19, 2004

<http://www.ttb.gov>

Report Symbol TTBS S200-12-2003

	December 2003	November 2003	December 2002	CURRENT YEAR-TO-DATE	PREVIOUS YEAR-TO-DATE
Removed Tax-Exempt - Pipe Tobacco					
Export and to Export Warehouses	57,115	36,319	36,101	615,809	579,851
Other	0	0	0	28	108
Removed Tax-Exempt - Roll-Your-Own Tobacco					
Export and to Export Warehouses	0	0	0	9	0
Other	0	0	0	75	5
ON HAND / CLOSE OF BUSINESS					
Cigarettes - Small	28,869,922,017	38,905,371,568	34,501,108,478		
Cigarettes - Large	0	0	0		
Cigars - Small	129,434,751	153,326,791	117,495,676		
Cigars - Large	286,558,453	305,875,277	228,850,281		
Snuff	3,089,378	2,953,578	2,362,033		
Chewing Tobacco	2,035,865	2,401,329	1,763,848		
Pipe Tobacco	213,755	243,218	136,328		
Roll-Your-Own Tobacco	340,301	437,242	216,488		

	December 2003	November 2003	December 2002	CURRENT YEAR-TO-DATE	PREVIOUS YEAR-TO-DATE
IMPORTED FROM FOREIGN COUNTRIES					
Entered/Withdraw n for Consumption					
(As reported by the Bureau of the Census)					
Cigarettes - TOTAL	2,021,586,000	1,635,876,000	2,119,013,000	23,085,086,000	20,851,781,000
Cigars - Small	8,529,000	8,642,000	4,902,000	172,369,000	95,082,000
Cigars - Large, Class A-G	20,697,000	16,912,000	13,279,000	206,375,000	192,997,000
Cigars - Large, Class H	32,591,000	26,888,000	28,127,000	308,191,000	306,927,000
Total Large Cigars	53,288,000	43,800,000	41,406,000	514,566,000	499,924,000
Snuff	1,001	117	523	8,369	9,827
Chewing Tobacco	21,376	509	27,570	174,399	215,769
Pipe Tobacco	74,926	51,800	51,510	698,086	973,090
Roll-Your-Own Tobacco	154,588	57,931	107,800	1,254,008	1,084,950
Released to Domestic Factories Without Payment of Tax (Included in above category)					
Cigarettes - Small	620	7,336	98,625	318,159	133,516,174
Cigarettes - Large	0	0	0	0	0
Cigars - Small	0	0	0	0	0
Cigars - Large	0	0	0	0	4,677,253
Snuff	0	0	0	0	0
Chewing Tobacco	0	0	0	0	0
Pipe Tobacco	0	0	0	0	0
Roll-Your-Own Tobacco	0	0	0	0	384